



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2005

Ms. Carol Longoria  
Public Information Coordinator  
The University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2902

OR2005-04077

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 224295.

The University of Texas at Austin (the "university") received a request for the attendance statistics for the Ringling Bros. and Barnum & Bailey/Feld Entertainment appearance on July 8-11, 2004. You make no arguments and take no position as to whether the information is excepted from disclosure, but you state that the request may involve a third party proprietary interest. Accordingly, you indicate and provide documentation showing that, pursuant to section 552.305 of the Government Code, you notified Feld Entertainment, Inc. ("Feld") of the request for information and of its right to submit arguments explaining why the information concerning it should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered Feld's arguments and reviewed the responsive information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Initially the requestor asserts that the Feld failed to comply with the procedural requirements of section 552.305 of the Governmental Code in notifying the requestor of the reasons as to why the requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(e). However, the documents submitted to this office reflect that Feld copied the requestor on its briefing to this office. We will now address Feld's arguments against public disclosure.

Initially, Feld argues that the responsive information is protected by its “constitutional and fundamental right to privacy.” Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This provision encompasses the doctrines of common law and constitutional privacy. However, these doctrines protect the privacy interests of individuals, not of corporations or other types of business organizations. *See* Open Records Decision Nos. 620 (1993) (corporation has no right to privacy), 192 (1978) (right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also* *U. S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App.–Houston [14th Dist.] 1989), *rev’d on other grounds*, 796 S.W.2d 692 (Tex. 1990) (corporation has no right to privacy). Accordingly, Feld has no privacy interest in the responsive information.

Feld also argues that the responsive information may not be disclosed under section 552.104 of the Government Code. Section 552.104 excepts from disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. This section protects the interests of governmental bodies, not third parties. Open Records Decision No. 592 (1991). As the university does not raise section 552.104, this section is not applicable to the requested information. *Id.* (section 552.104 may be waived by governmental body). Thus, the responsive information may not be withheld under section 552.104 of the Government Code.

We turn now to Feld’s claim that the responsive information is excepted from disclosure under Section 552.110(b) of the Government Code. This section excepts from disclosure “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Section 552.110(b) requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *See* Open Records Decision No. 661 at 5-6 (1999) (stating that business enterprise must show by specific factual evidence that release of information would cause it substantial competitive harm); *see also* *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Having considered Feld’s arguments, we find that it has made only conclusory allegations that release of the responsive information would cause the company substantial competitive injury and has provided no specific factual or evidentiary showing to support these allegations. Accordingly, no portion of the responsive information may be withheld pursuant to section 552.110(b). As neither the university nor Feld claims any other exceptions against disclosure, the responsive information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jaclyn N. Thompson', with a long horizontal flourish extending to the right.

Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 224295

Enc. Submitted documents

c: Ms. Jennifer O'Connor  
PETA  
501 Front St.  
Norfolk, VA 23510  
(w/o enclosures)

Mr. David Pitman  
Booking Director, North American Tours  
Feld Entertainment, Inc.  
8607 Westwood Center Dr.  
Vienna, VA 22182  
(w/o enclosures)